

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

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U.S. BANKRUPTCY COURT
DISTRICT OF HAWAII
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In re

CHARLES JEFFREY WIGGINS,

Debtor.

STRUCTURED INVESTMENTS CO.,
LLC,

Plaintiff,

vs.

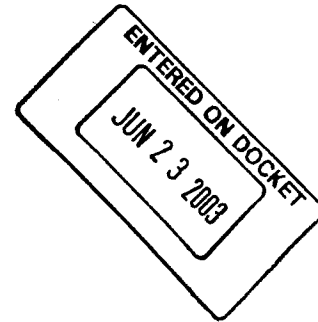
CHARLES JEFFREY WIGGINS,

Defendant.

) Case No. 00-03743

) Chapter 7

) Adv. Proc. No. 01-00018



FINDINGS OF FACT AND CONCLUSIONS OF LAW

The trial in this adversary proceeding was conducted on June 9, 2003.

Chuck Choi, Esq., appeared on behalf of plaintiff Structured Investments Co., LLC ("Structured Investments"). Defendant Charles Jeffrey Wiggins appeared on his own behalf.

This case requires the court to decide whether the debt owed to Structured Investments is nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) or

(B), and if so, to determine the amount of the debt. Structured Investments withdrew its section 523(a)(2)(A) claim at trial and, thus, the section 523(a)(2)(B) claim remains for decision. Based on the evidence adduced at trial, the court makes the following:

FINDINGS OF FACT

1. Wiggins is a former Honolulu Police Department officer who receives a police disability pension payment of \$533.50 every two weeks.

2. Wiggins tried to start a business, but needed additional capital. He placed a classified advertisement in the newspaper seeking capital for his business. Wiggins intended to use his pension as security for a loan or investment. In response to the advertisement, Wiggins was approached by a broker, who referred him to another broker. The second broker then referred Wiggins to Structured Investments, which made contact with Wiggins in May 1999.

3. Structured Investments is in the business of purchasing streams of future income, in this case (and in many other cases) in the form of pensions, by paying a pensioner a lump sum of cash in return for the pensioner's agreement to remit a fixed number of future pension income payments to Structured Investments.

4. Wiggins made material factual representations about his assets, liabilities, income, and expenses to Structured Investments for the purpose of inducing Structured Investments to pay him a lump sum. These factual representations are contained in a “Financial Information Form” completed by Wiggins and in a letter which Wiggins sent in response to Structured Investments’ request for further information. Wiggins expressly represented that, “Everything that I have stated in this [“Financial Information Form”] is correct to the best of my knowledge” and he implicitly represented that the facts stated in his follow-up letter were correct.

5. Wiggins’ written representations were false in material respects.

a. Wiggins represented in the “Financial Information Form” that his annual income was \$35,364.¹ This representation was false.

Although Wiggins’ stated salary was \$35,364, his actual earnings for the two preceding years had been approximately 60 percent of that amount because Wiggins often took leave without pay. Wiggins’ testimony that he expected to

¹At trial, Wiggins claimed that the handwritten income figure actually reads \$25,369. He is incorrect. In his follow-up letter, Wiggins stated that his monthly income was \$2,947 and he enclosed a pay stub reflecting bi-monthly income of \$1,473.50, both of which are equal to \$35,364 per year. The \$25,369 figure is inconsistent with all of the other information provided by Wiggins.

work full time in the future, notwithstanding the injuries and other problems which had prevented him from working in the immediate past, is not credible.

b. On the “Financial Information Form,” Wiggins represented that he earned \$400 to \$500 per month as a personal fitness trainer. This representation was false. Wiggins could not say at trial how much money he ever made as a personal trainer. He never claimed this income on his tax returns. Although he may have earned \$400 to \$500 per month as a personal trainer during a few months, he never earned that much on a regular or consistent basis.

c. Wiggins stated that his rent was \$700 and his other expenses were \$400 per month (in addition to his debt service payments that were stated as \$550 in the “Financial Information Form”). This representation was false. A little over a year later, Wiggins filed his bankruptcy petition, in which he represented (on his Schedule J) that his expenses totaled \$3,134. Wiggins offered no credible explanation for this discrepancy.

6. Wiggins knew that these representations were false.

7. Structured Investments claimed that Wiggins made other false representations, but Structured Investments failed to carry its burden of proof that Wiggins knew that those representations were false.

a. Wiggins represented to Structured Investments that he owned real property located in Florida with a value of \$5,000. Wiggins included the following explanation: “Given to me in Feb. ‘96 by my mother”. In his bankruptcy schedules, Wiggins did not list the real estate located in Florida because he discovered that the property was worthless and because he discovered that his mother never transferred the title to him. Structured Investments failed to carry its burden of proving that Wiggins knew at the time he made the representation that the statement regarding the real property located in Florida was false.

b. Wiggins listed as an asset a “outstanding loan owed to me” (or account receivable) of \$7,000. In his bankruptcy schedules, he did not list any accounts receivable. Wiggins testified at trial that the receivable became uncollectible because one of the people who owed him money died. Structured Investments failed to prove that this representation was false and that Wiggins knew that it was false.

8. Wiggins made these materially false representations of his financial condition with the intent to deceive Structured Investments.

9. Structured Investments and Wiggins executed an Annuity Utilization Agreement on September 14, 1999, whereby Structured Investments

paid Wiggins \$39,653 to purchase 192 of Wiggins' pension payments consisting of \$533.50 every two weeks. The agreement provided that, if there was an interruption in payments caused by Wiggins, Structured Investments would be entitled to receive 240 payments.

10. Structured Investments reasonably relied on the written financial information provided by Wiggins when it entered into the Annuity Utilization Agreement and paid \$39,653 to Wiggins.

11. Structured Investments received 23 payments of \$533.50 each. Wiggins then diverted the pension payments to himself.

12. Wiggins filed a Chapter 7 bankruptcy on October 27, 2000.

13. Structured Investments has suffered damages proximately resulting from Wiggins' materially false statements in an amount equal to:

a. The sum of the pension payments which the Debtor sold to Structured Investments but diverted to himself, up to the date of entry of judgment, with pre-judgment interest thereon, and;

b. The present value (as of the date of judgment) of the future payments due to Structured Investments under the Annuity Utilization Agreement.

CONCLUSIONS OF LAW

1. Section 523(a)(2)(B) provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

....

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by —

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive

2. In order to prevail under section 523(a)(2)(B), the creditor must establish "(1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, [and] (7) that damage proximately resulted from the

representation." Candland v. Insurance Co. of N. America (In re Candland), 90 F.3d 1466, 1469 (9th Cir.1996).

3. The creditor must prove these elements by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991). "[W]hen there is evidence of materially fraudulent statements, little investigation is required for a creditor to have reasonably relied on the representations." Gertsch v. Johnson & Johnson Finance Corp. (In re Gertsch), 237 B.R. 160, 170 (B.A.P. 9th Cir. 1999).

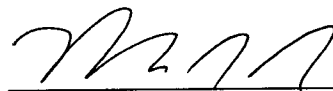
4. Based on the above findings of fact, the debt owed to Structured Investments is not dischargeable pursuant to section 523(a)(2)(B). Wiggins made material written statements of fact about his financial condition that he knew were false. He made the false written statements with the intent of deceiving Structured Investments into advancing him a lump sum amount on his future disability pension payments. Structured Investments reasonably relied on Wiggins' misrepresentations and suffered damages as a result.

5. Structured Investments also seeks a determination of the amount of the debt that is not dischargeable. Structured Investments contends that the court should enter judgment in an amount equal to the arithmetic sum of the future payments which Wiggins diverted to himself. This would result in a windfall to Structured Investments. Structured Investments was never entitled to

receive the pension payments until they became due in the future. In order to compensate Structured Investments for its actual loss, the future payments must be reduced to present value. To determine the amount of the debt that is not dischargeable, the court will require that the parties submit further briefing and declarations on: (1) the appropriate rate of interest for the past due payments, (2) the appropriate discount rate on the future payments, and (3) a proposed calculation of the amount of the debt based on the above findings of fact.

JAN 20 2003

DATED: Honolulu, Hawaii, _____.



Robert J. Faris
United States Bankruptcy Judge